IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5040 OF 2005

Rashtriya Shikshan Sangh & anr. ..Petitioners.
Vs.
Rajmati S. Mali & Ors. .. Respondents.

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Mr. S.S. Pakale for the Petitioners.
Mr. Machhindra Patil for Respondent No.1.
Mr. C.R. Sonawane, Assistant Government Pleader for Respondent Nos. 2 to 5.
Mr. G. M. Savagave for Respondent No.6.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

8th March, 2006.

P.C. :

1. The First Petitioner conducts an ashram school for standards 1 to 4. The school is a primary school. The First Respondent was engaged as a teacher in the ashram school on 30th June, 1996 and her appointment was approved by the Special District Social Welfare Officer, Sangli on 11th October, 1996. The First Respondent is a duly qualified teacher and it is an admitted position that before she came to be appointed by the Petitioners, the First Respondent had completed her D.Ed. On 3rd June, 1996.

The services of the First Respondent came to be dispensed with on 21st December, 2002 without holding an enquiry and without compliance with the principles of natural justice. The First Respondent had challenged the order of termination initially before the School Tribunal on 14th January, 2003. In view of the judgment of the Full Bench in **Suryakant Sheshrao Panchal v. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Pararak Mandal** – 2002(3) Mh. L.J. 659 an Ashram School conducting classes from 1st to 7th standards or in an intermediary level does not require recognition from any of the authorities specified in Section 2(21) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and such a school is not a private school within the meaning of that Act. An employee working in such an ashram school does not therefore have the remedy of an appeal under Section 9 of the MEPS Act before the School Tribunal. In view of the decision of the Full Bench the appeal before the Tribunal was not maintainable and the First Respondent moved the Divisional Social Welfare Officer, Pune Division on 19th January, 2004 after the appeal filed before the School Tribunal was withdrawn on 30th December, 2003. An application was moved for condoning the delay in preferring the appeal and delay

was condoned by the Divisional Social Welfare Officer on 19th April, 2005. Thereafter the appeal was heard on several dates and final orders were passed on 20th June, 2005 after all the parties including the Petitioners herein were heard. The President of the Petitioners had submitted his written statement on 26th May, 2004. The Divisional Social Welfare Officer has noted that there was no complaint of any nature in regard to the services of the First Respondent nor was the First Respondent ever informed of any short coming or deficiency. The termination of service without an enquiry was accordingly held to be illegal and an order of reinstatement came to be passed together with backwages.

2. This Writ Petition was heard with Writ Petitions 5041 and 5042 of 2005. We have dealt with the companion writ petitions separately since in those companion petitions, the teachers admittedly had not completed their D. Ed. In the present case, counsel appearing for the Petitioners has fairly not disputed the factual position that the First Respondent was a duly qualified teacher. The services of the First Respondent have been found to be arbitrarily terminated without cause or justification and without any enquiry. The First Respondent is a duly qualified and trained

teacher. Counsel for the Petitioners has in the circumstances conceded that the termination was illegal. In so far as the issue of back wages is concerned, the First Respondent was prevented from rendering duties due to the termination which is admitted before this Court to be unlawful. The First Respondent is a duly qualified teacher. It is not the case of the Petitioners that the First Respondent was employed elsewhere. The termination is wholly illegal. The order of the Divisional Social Welfare Officer does not, in the circumstances, suffer from any infirmity and we see no reason to exercise our extraordinary jurisdiction under Article 226 of the Constitution. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.